

July 11, 2006

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND RECOMMENDATION ON APPLICATIONS FOR  
REZONE AND PRELIMINARY PLAT APPROVAL**

SUBJECT: Department of Development and Environmental Services File Nos. **L04TY403/L04P0037**  
Proposed Ordinance Nos. **2006-0227/2006-0225**

**HALEY'S PARK**

Rezone Application and Preliminary Plat

Location: North of Northeast 160th Street, between 119th Avenue Northeast and  
120th Avenue Northeast

Applicant: K & K LLC  
*represented by* **Luay Joudeh**  
D.R. Strong Consulting Engineers  
10604 NE 38th Place, Suite 101  
Kirkland, Washington 98033-7903  
Telephone: (425) 827-3063  
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King County: Department of Development and Environmental Services,  
*represented by* **Karen Scharer**  
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Renton, Washington 98055  
Telephone: (206) 296-7114  
Facsimile: (206) 296-7051

**RECOMMENDATIONS:**

Department's Preliminary Recommendation:

Approve, subject to conditions

Department's Final Recommendation:

Approve, subject to conditions

Examiner's Recommendation:

Approve, subject to conditions

**EXAMINER PROCEEDINGS:**

Hearing Opened:

June 27, 2006

Hearing Closed:

June 27, 2006

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.  
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

**FINDINGS, CONCLUSIONS & RECOMMENDATION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

**FINDINGS:**

**1. General Information:**

Applicant:	Karl Best / K & K LLC PO Box 1790 Snohomish, WA 98290 Phone: (425) 238- 9831
Engineer:	DR Strong Consulting Engineers Inc. 10604 NE 38 <sup>th</sup> Place #101 Kirkland, WA 98033 Contact: Luay Joudeh, P.E. Phone: (425) 827-3063
Location:	The site is located north of NE 160 <sup>th</sup> Street, between 119 <sup>th</sup> Avenue Northeast and 120 <sup>th</sup> Avenue Northeast (if extended)
Section/Township/Range:	NW 16-26-05 Parcel # 1626059081
Acreage Plat:	3.95 acres
Current Zoning:	O (Office)
Number of Lots:	Proposed - 38
Density:	10.8 dwellings per acre
Lot Size:	generally 2,800 square feet
Proposed Use:	single family detached dwellings
Sewage Disposal:	Northshore Utility District
Water Supply:	Northshore Utility District
Fire District:	King County Fire District # 36
School District:	Northshore #417
Community Plan:	Northshore
Drainage Subbasin:	Juanita Creek & Sammamish River
King County Permits:	Rezone and Subdivision
Application Completeness Date:	January 27, 2005 (Plat Filed December 30, 2004& Rezone December 30, 2004)
Threshold Determination:	Determination of Nonsignificance (DNS)
Date of Issuance:	April 3, 2006

2. Except as modified herein, the facts set forth in the DDES reports to the Examiner and the DDES and King County Department of Transportation (KCDOT) testimony are found to be correct and are incorporated herein by reference.
3. The subject property is a 3.95-acre, rectangularly shaped parcel located south of Bothell and west of Woodinville in the unincorporated Norway Hill/Kingsgate area, on the north side of Northeast 160th Street between the I-405 interchange and 124th Avenue Northeast. The site terrain descends gently to the southwest. The property is vegetated with a moderately dense mix of mature coniferous and deciduous trees of native species, while the undergrowth is largely open

grassy areas. A Category IV wetland lies in the northwest portion of the site and extends offsite to the north. An unoccupied formerly residential structure, which evidently has most recently been used as an office building, lies onsite. The vicinity of the site is developed directly adjacent to the east and to the south across Northeast 160th Street with detached single-family dwellings at fairly standard suburban densities. To the north lies a complex of multi-story multi-family residential development, and to the west is a private school and a storage parcel.

4. Applicant K & K LLC proposes subdivision of the property into 38 lots for detached single-family residential dwellings. The residential density would be 10.8 dwellings per acre, with lot sizes approximately 2,800 square feet in area. The subdivision design provides for onsite recreation amenities, drainage detention and water quality facilities, and a Native Growth Protection Area tract in the northwest portion to protect and buffer the onsite wetland portion. Thirty peak hour vehicular trips would be generated by the development. Internal access to the lots would be provided by the extension of a public road (120th Avenue Northeast) northerly into the site from an intersection with Northeast 160th Street in the eastern portion of the frontage. An internal loop would branch from the entry road forming a looped access to all of the lots. As recommended to be conditioned (unopposed by the applicant), the subdivision would be revised so that no road stubs would be extended to adjacent properties, leaving the development a deadend area with no through traffic and only the single entry onto Northeast 160th Street. Road Variance L05V0077 has been granted for reduced intersection spacing and entering site distance along Northeast 160 Street at the proposed entry. As configured with the variance approval, KCDOT has determined that operation of the existing Northeast 160th Street channelization would be not be compromised.
5. The development’s stormwater drainage and detention plan is subject to the Conservation Flow Control and Basic Water Quality requirements of the 2005 King County Surface Water Design Manual, and will adequately mitigate for downstream conditions after release from onsite detention, which will be in a vault underneath a recreation area in the southwest portion of the site adjacent to Northeast 160th Street.
6. Sanitary sewer and public water service are available from the Northshore Utility District.
7. Upon the property’s development, safe walking conditions will be in place for resident school children walking to their respective Northshore School District schools and school bus stops.
8. The property is currently zoned Office (O). The zoning immediately to the east and south is R-6, corresponding roughly to the relatively low density suburban residential development in those areas. The R-18 zoning of the property to the north corresponds to the multi-family development in that location. The property to the west is zoned Neighborhood Business (NB). The Office zone allows residential development at a base density of 36 dwelling units per acre, but it must be part of a mixed-use development. Detached single-family residences are not permitted. [KCC 21A.08.030 and 21A.12.040] The proposed development therefore would not be permitted under the property’s current O zoning.
9. A severe limitation on development of the property is presented by the proximity of the site to the I-405 interchange at Northeast 160th Street and the intersection with Juanita-Woodinville Way Northeast just east of the interchange. The Level of Service (LOS) at the intersection of Northeast 160th Street and just east of the interchange is LOS F, and the intersection is under Washington State Department of Transportation (WSDOT) jurisdiction. WSDOT indicates that no traffic impact mitigation will be permitted in the proximity of the interchange, particularly the

signalization of Juanita-Woodinville Way Northeast intersection necessary to improve the LOS, due to its concern that another signal in close proximity to the interchange will have adverse effects on the interchange’s entry and exit ramp functions.

10. Essentially, a development of greater intensity than that proposed, with a vehicular traffic trip generation of greater than 30 peak hour trips, cannot be approved under current King County traffic impact mitigation standards. (KCC 14.80.030 establishes a 30 peak hour trip threshold whereby intersection improvements are required for LOS conditions worse than LOS E (such as the subject LOS F situation), and since the intersection cannot be improved because of WSDOT’s stance, the 30 trip threshold forms the limit of development permissibility on the site.
11. It should also be noted that KCDOT indicates that it would have been unlikely to have issued the road standards variance to intersection spacing and entering sight distance with a more dense development due to the higher trip generation of a more intense development. Part of the consideration in granting the variance was that even though there exists a less-than-standard stacking lane on Northeast 160th Street for left turns into the site, the proposed development would not significantly aggravate that situation because of its relatively low intensity and resultant trip generation, and because the development design will be required to be essentially a dead-end with no through traffic adding to the intersection with Northeast 160th Street.
12. Accordingly, rather than severely underutilizing the site with a drastically limited mixed-use development, the Applicant has requested rezoning of the site to R-12, which would permit the relatively dense detached single-family development proposed. The Applicant also has provided a limited study accepted by DDES which shows that there is very limited office space demand in the subject area, and no lack of inventory. That evidence is unrefuted in the record.

#### CONCLUSIONS:

1. Criteria for the review of rezone applications are established in KCC 20.24.190. Rezone proposals are also addressed by Washington case law:

The following general rules apply to rezone applications: (1) there is no presumption of validity favoring the action of rezoning; (2) the proponents of the rezone have the burden of proof in demonstrating that conditions have changed since the original zoning; and (3) the rezone must bear a substantial relationship to the public health, safety, morals, or welfare.

[*Citizens v. Mount Vernon (Mount Vernon)*, 133 Wn.2d 861, 874-75, 947 P.2d 1208 (1997), citing *Parkridge v. Seattle*, 89 Wn.2d 454, 462, 573 P.2d 359 (1978)] The courts have also held that a rezone which serves to implement the adopted comprehensive plan need not meet the “changed circumstances” portion of the *Parkridge* test. [*SORE v. Snohomish County*, 99 Wn.2d 363, 370-371, 662 P.2d 816 (1983); *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 846, 899 P.2d 1290 (1995)]

2. Rezoning of the property from O to R-12 conforms to the applicable comprehensive plan, the 2004 King County Comprehensive Plan:
  - A. The comprehensive plan contains an internal conflict regarding the permissibility of R-12 zoning in Neighborhood Business Center-designated areas. On the one hand, Policy U-164 on p. 2-16 in the Urban Land Use section of the Urban Communities chapter

states, “Within neighborhood business centers, the following zoning is appropriate: Neighborhood Business and Office.” On the other hand, p. 9-2 in the Plan Implementation chapter contains a detailed table enumerating the appropriate implementation zones for each land use designation. Among the zones specifically cited as appropriate for the Neighborhood Business Center designation is the R-12 zone.

- B. In resolving such conflict, the Examiner concludes that the more specific tabulated recitation of appropriate zones for each land use designation in the zoning implementation table on plan p. 9-2 controls over the policy language in Policy U-164. In addition, the Examiner must apply the principle that Washington courts have applied in resolving ambiguities or internal conflicts in land use regulation, holding that since land use regulation is in derogation of common law property rights, regulatory ambiguities and internal inconsistencies must be resolved in favor of the property interest. [*Morin v. Johnson*, 49 Wn.2d 275 (1956)] In this case, the private property interest should have the inconsistency resolved in favor of its development desires, and R-12 zoning considered appropriate for and applicable to the Neighborhood Business Center designation.
- 3. The requested R-12 zone, concluded on balance to be appropriate for areas designated Neighborhood Business Center, complies with and will implement the comprehensive plan.
- 4. The requested rezone to R-12 also conforms to the county code rezone standards established in KCC 20.24.190(D), which in this case essentially requires a showing of changed circumstances and the rezone being in the public interest.
  - A. The Examiner concurs with DDES’s fundamental conclusion that the last legislative zoning actions for the area did not or could not fully anticipate or contemplate the traffic impact limitations on further development on Northeast 160th Street in the subject area caused by the unmitigatable deficient LOS of the Juanita-Woodinville Way Northeast intersection within the I-405 interchange area.
  - B. A comparable cap on intense development onsite is the combination of access limitations and restrictions posed by the intersection spacing and entering sight distance problems addressed by the road variance, which was granted in large part only due to the fact that the less-than-standard stacking lane for left turns into the site would not be adversely affected by a relatively low-intensity and deadend build-out of the property as proposed rather than development under the O zone.
  - C. Such changed conditions and circumstances do not affect most other properties in the vicinity on the Northeast 160th Street corridor, since they are already built out.
  - D. The requested reclassification is in the public interest as it will allow reasonable development of the site which will be compatible with its surrounding uses and along several horizontal axes will provide a classic gradation of development densities, and also will allow for development which has an effectively and suitably limited traffic impact on fully congested arterial intersections and on turning movements on Northeast 160th Street in conformity with county standards as adjusted under the Road Variance. Also, unrefuted evidence in the record shows that there is very limited office space demand in the subject area, and no lack of inventory, so loss of the subject property to office or mixed-use development will not be contrary to the public interest.

- E. The proposal conforms to KCC 20.24.190 (D)(1), (2) and (5). (KCC 20.24.190 (D)(3) and (4) apply only to upzonings and are inapplicable to the subject rezone proposal.) In summary, the requested rezone conforms to applicable county code provisions governing rezones.
- 5. The requested R-12 zone conforms to the county code rezone criteria established in KCC 20.24.190.
- 6. In general, conformity of a rezone to the applicable comprehensive plan and code provisions is tantamount to its “bear[ing] with a substantial relationship to the public welfare” since the comprehensive plan and implementing regulations are the most direct expression of public policy in the topical area of land use. There is no evidence or argument in the record which suggests that the requested rezone is not in support of the public necessity, convenience and general welfare.
- 7. The requested rezone meets the applicable approval tests and should be approved.
- 8. The proposed subdivision, as conditioned below, would conform to applicable land use controls. In particular, the proposed type of development and overall density are specifically permitted under the R-12 zone requested.
- 9. If approved subject to the conditions below, the proposed subdivision will make appropriate provisions for the topical items enumerated within RCW 58.17.110, and will serve the public health, safety and welfare, and the public use and interest.
- 10. The conditions for final plat approval set forth below are reasonable requirements and in the public interest.
- 11. The dedications of land or easements within and adjacent to the proposed plat, as shown on the revised preliminary plat submitted on August 10, 2005, or as required for final plat approval, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.

#### RECOMMENDATION:

APPROVE the rezoning of the subject property from Office (O) to R-12, and APPROVE the preliminary plat of *Haley’s Park*, as revised and received August 10, 2005, subject to the following conditions of approval:

- 1. Compliance with all platting provisions of Title 19 of the King County Code.
- 2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
- 3. The plat shall comply with the base density and minimum density requirements of the R-12 zone classification. All lots shall meet the minimum dimensional requirements of the R-12 zone classification or shall be as shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environment Services.

Any/all plat boundary discrepancies shall be resolved to the satisfaction of DDES prior to the submittal of the final plat documents. As used in this condition, "discrepancy" is a boundary hiatus, an overlapping boundary or a physical appurtenance which indicates an encroachment, lines of possession or a conflict of title.

4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
5. The applicant shall obtain documentation by the King County Fire Protection Engineer certifying compliance with the fire flow standards of Chapter 17.08 of the King County Code.
6. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the approved preliminary plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
  - a. Drainage plans and analysis shall comply with the 2005 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
  - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
  - c. The following note shall be shown on the final recorded plat:

All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # \_\_\_\_\_ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
7. The drainage facilities shall meet the requirements of the 2005 King County Surface Water Design Manual (KCSWDM). The drainage facilities shall be designed to meet at a minimum the Conservation Flow Control and Basic Water Quality menu in the 2005 King County Surface Water Design Manual (KCSWDM).
8. The following road improvements are required to be constructed according to the 1993 King County Road Standards(KCRS):
  - a. 120<sup>th</sup> Ave NE shall be improved at a minimum to the urban subaccess street standard.

- b. The internal loop roads NE 161<sup>st</sup> St, 119<sup>th</sup> Pl NE, and 162<sup>nd</sup> PL NE shall be improved at a minimum to the urban minor access street standard. The internal loop roads shall be designed with low speed curves, with the exception of the NE 161<sup>st</sup> St/120<sup>th</sup> Ave NE intersection. This intersection can be designed as a “T” type intersection.
  - c. FRONTAGE: The frontage of the site along NE 160<sup>th</sup> Street shall be reconstructed, as necessary, to relocate the existing driveway access to the proposed new plat street configuration, and matching the general alignment of the existing north side curb line as shown on the preliminary plat map. The design shall require compliance with Section 4.01(f) of the KCRS; asphalt overlay when widening.
  - d. Modifications to the above road conditions may be considered according to the variance provisions in Section 1.08 of the KCRS.
  - e. Tract B shall be a minimum 26 feet wide and improved as a private access tract (PAT) per Section 2.09 of the KCRS. This tract shall be owned and maintained by the lot owners served. The Tract shall also include a maintenance access easement to King County for maintenance of the drainage facility. Notes to this effect shall be shown on the engineering plans and on the final plat map.
  - f. The above PAT shall include a 5 foot wide concrete sidewalk extended from 119<sup>th</sup> Place NE to the Tract A Recreation Space.
  - g. The driveways to the proposed Lots in the northwest and northeast corners of the plat (off the low speed curves) shall be a minimum 20 feet wide and improved as joint use driveways per Section 3.01 of the KCRS, unless otherwise approved by DDES. These tracts shall be owned and maintained by the lot owners served. Notes to this effect shall be shown on the engineering plans and on the final plat map.
  - h. Road Variance L05V0077 is approved for this development. All conditions of approval for this variance shall be met prior to engineering plan approval.
- 9. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
  - 10. The engineering plans and on the final plat map shall include the three easements shown in the title report.
  - 11. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at the final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.



12. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to the recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
13. There shall be no direct vehicular access to or from NE 160<sup>th</sup> St. from those lots which abut it. A note to this effect shall appear on the engineering plans and the final plat.
14. The proposed subdivision shall comply with the Critical Areas Code as outlined in K.C.C. 21A.24. Permanent survey marking, and signs as specified in K.C.C. 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of Critical areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.
15. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from K.C.C. 21A.24 shall also be addressed by the applicant.
  - a. The Category IV wetland shall have a 50-foot buffer as shown on the preliminary plat map dated August 10, 2005.
  - b. Buffer averaging maybe approved subject to KCC 21A.24.325. A final buffer averaging plan shall be submitted during engineering review.
  - c. All critical areas and their buffer shall be placed in Critical Area Tracts for long term protection.
  - d. The notation on plans shall be revised to state “All Trees Within CAO Tract shall be Retained.”
  - e. A fence (preferably split-rail) and signage shall be installed along the Critical Area Tract boundary for long term protection and to clearly mark the extent of the tract.
  - f. A 15-foot building setback line (BSBL) is required from the edge of all Critical Area Tracts and shall be shown on all affected lots.
  - g. The engineering plans shall be routed to Critical Areas Staff for review of compliance to the above conditions.
16. The following note shall be shown on the final engineering plan and recorded plat, if wetland buffer is necessary per condition 15 above:

**RESTRICTIONS FOR CRITICAL AREA TRACTS AND SENSITIVE  
AREAS AND BUFFERS**

Dedication of a Critical area tract/ Critical area and buffer conveys to the public a beneficial interest in the land within the Critical area tract/Critical area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and

welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The Critical area tract/ Critical area and buffer imposes upon all present and future owners and occupiers of the land subject to the Critical area tract/ Critical area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the Critical area tract/ Critical area and buffer. The vegetation within the Critical area tract/ Critical area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the Critical area tract/ Critical area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the Critical area tract/ Critical area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the Critical area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

17. Tracts D and E shall be designated as “Open Space” or eliminated from the plat. These tracts do not qualify as “recreational area” due to size and dimensions. Any portion of Tract A with dimensions of less than 30 feet shall not be included in the calculation of required recreation area.
18. Suitable recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 in providing sport court[s], children’s play equipment, picnic table[s], benches, etc.
  - a. A detailed recreation space plan (i.e., landscape specs, equipment specs, etc.) shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of the engineering plans. This plan shall comply with Ordinance # 14045.
  - b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
  - c. It is noted that if the recreational space is not increased to the size required, a partial fee-in-lieu will instead be paid for that portion not provided. (See next Condition.)
19. A fee-in-lieu of required recreation space (not set aside in the plat) shall be paid by the applicant to King County. The amount of the fee shall be determined by the King County Park System, consistent with the provisions of K.C.C. 21A.14.185
20. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or critical area tract(s).

21. Street trees shall be included in the design of all road improvements, and shall comply with Section 5.03 of the KCRS and KCC 21A.16.050
- a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
  - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
  - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
  - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.
  - e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
  - f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
  - g. The applicant shall contact Metro Service Planning at (206) 684-1622 to determine if Northeast 160th Street is on a bus route. If Northeast 160th Street is a bus route, the street tree plan shall also be reviewed by Metro.
  - h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.
- A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on current County fees.
22. To implement KCC 16.82.156 Significant Trees within Urban Growth Area, a detailed tree retention plan shall be submitted with the engineering plans for the subject plat. The tree retention and engineering plans shall be consistent with the requirements of KCC. No clearing of the site is permitted until the tree retention plan is approved by DDES. Flagging and temporary fencing of trees to be retained shall be provided, consistent with KCC. The placement

of impervious surfaces, fill material, excavation work, or the storage of construction materials is prohibited with the fenced areas around preserved trees, except as may be permitted under the provisions of KCC.

A note shall be placed on the final plat indicating that the trees shown to be retained on the tree retention plan shall be maintained by the future owners of the proposed lots, consistent with KCC 16.82. The tree retention plan shall be included as part of the final engineering plans for the subject plat.

RECOMMENDED this 11th day of July, 2006.

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Peter T. Donahue, Deputy  
King County Hearing Examiner

TRANSMITTED this 11th day of July, 2006, to the parties and interested persons of record:

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NOTICE OF RIGHT TO APPEAL  
AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before July 25, 2006***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before August 1, 2006***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3<sup>rd</sup> Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the Clerk of the Council shall place proposed ordinances which implement the Examiner's recommended actions on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council approving or adopting a recommendation of the Examiner shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the date on which the Council passes an ordinance acting on this matter.

MINUTES OF THE JUNE 27, 2006, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT  
AND ENVIRONMENTAL SERVICES FILE NO. L04P0037 & L04TY403.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Karen Scharer, Bruce Whittaker and Kristen Langley, representing the Department; and Luay Joudeh representing the Appellant.

The following Exhibits were offered and entered into the record:

- |               |  |
|---------------|--|
| Exhibit No. 1 | DDES file L04TY403   |
| Exhibit No. 2 | DDES file L04P0037   |
| Exhibit No. 3 | DDES preliminary report for rezone & plat for 6/27/06, with attachments as follow:<br>3.1. 38 Lot Plat Design<br>3.2. 38 Lot Plat Design w/staff notes |
| Exhibit No. 4 | Map of proposed rezone from O to R-12  |
| Exhibit No. 5 | Corrections/Revision to Preliminary Staff Reports dated June 26, 2006  |

Exhibit No. 6	Application for land use /rezone L04TY403 received 12/30/2004
Exhibit No. 7	Application for land use permit/plat L04P0037 received 12/30/2004
Exhibit No. 8	SEPA Environmental checklist dated 12/29/04 & received 12/30/2004
Exhibit No. 9	SEPA Determination of non-significance issued 12/16/2003
Exhibit No. 10	<u>Revised</u> Site plan (38 lot preliminary plat map) received 8/10/2005
Exhibit No. 11	Revised Traffic Impact Analysis by Gibson Traffic Consultants., received 08/10/2005
Exhibit No. 12	Revised Level 1 Downstream Analysis by D R. Strong & Assoc., dated 08/09/2005
Exhibit No. 13	Wetlands Study by Adolfson Environmental Solutions dated 07/28/2005.
Exhibit No. 14	King County Certificate of Sewer Availability, dated 12/14/2004
Exhibit No. 15	King County Certificate of Water Availability, dated 12/14/2004
Exhibit No. 16	Certificate of Transportation Concurrency dated 2/04/2005
Exhibit No. 17	Revised Density Calculation Worksheet received 8/10/2005
Exhibit No. 18	D R Strong letter dated 11/15/2005 w/attachments regarding reclassification
Exhibit No. 19	Approval of Road Variance dated 03/03/06
Exhibit No. 20	E-mail from J. Guiberson 3/21/05
Exhibit No. 21	E-mail from Guiberson 5/5/05
Exhibit No. 22	Assessor’s map 26-05-16NW
Exhibit No. 23	Email chain re: Haley Park Variance

PTD:gao

L04P0037 & L04TY403 RPT